

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESTER HOWARD	:	CIVIL ACTION
	:	
v.	:	
	:	
HON. ANNE E. LAZARUS, et al.	:	NO. 99-5849

MEMORANDUM AND ORDER

Fullam, Sr. J. June , 2000

Petitioner Lester Howard was convicted and sentenced in 1995 for aggravated assault. The conviction was affirmed on appeal in 1997, and the Pennsylvania Supreme Court denied discretionary review. In 1996, while the State Court appeal was pending, petitioner initially sought habeas corpus relief in this court, Howard v. Lazarus, et al., Civil Action No. 96-7312. The petition was dismissed without prejudice, for failure to exhaust court state remedies.

In December 1998, petitioner filed an application for relief under the Post Conviction Relief Act. That application was denied on December 2, 1999. Petitioner did not appeal, but, instead, filed the present petition to this Court for habeas corpus relief. The Magistrate Judge to whom the case was assigned has filed a report recommending that the application be denied, because all of petitioner's claims have been procedurally defaulted and cannot now be considered. I agree.

I note, however, that even if this Court were free to

consider petitioner's claims, the result would be the same: his claims have no conceivable merit.

Petitioner asserts that his rights were violated because of the delay in bringing him to trial. In the State Courts, this was posed as a violation of the state speedy trial rule (Pa.R.Crim.P. 1100). The State Courts made unassailable factual findings that the rule had not been violated (petitioner was not available for trial, because he was being tried elsewhere on other charges). In this court, the claim is that petitioner's counsel was ineffective for not also claiming that the delay in his trial amounted to a constitutional violation of his right to a speedy trial. But any trial within the time-limits of the state procedural rule would, almost by definition, satisfy constitutional requirements. Counsel cannot be deemed ineffective for failure to raise a pointless issue. Moreover, the same factual findings disposing of the Rule 1100 challenge would also dispose of the constitutional challenge, and are binding upon this Court. The State Courts have fully and fairly considered all of the claims made by the petitioner, and this Court would not be free to reach a contrary result, even if the petitioner had not permanently forfeited his right to raise them.

An Order follows.

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ORDER

AND NOW, this day of June 2000, upon consideration
of the Report and Recommendation of Magistrate Judge Arnold C.
Rapoport IT IS ORDERED:

1. The recommendation is APPROVED and ADOPTED.
2. The petition of Lester Howard for a writ of habeas
corpus is DENIED.
3. There is no probable cause for issuance of a
certificate of appealability.

John P. Fullam, Sr. J.